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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/503,042	02/11/2000	Albert D. Baker	Baker 21-4	6042
7590	04/23/2004		EXAMINER	
Joseph B. Ryan Ryan & Mason, L.L.P. 90 Forest Avenue Locust Valley, NY 11560			LY, ANH VU H	
			ART UNIT	PAPER NUMBER
			2667	10

DATE MAILED: 04/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/503,042	BAKER ET AL.
	Examiner	Art Unit
	Anh-Vu H Ly	2667

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05 February 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) 11-13 and 24-26 is/are allowed.
- 6) Claim(s) 1-10, 14-23 and 27 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Response to Amendment

1. This communication is in response to applicant's amendment filed February 05, 2004.

The proposed amendment to the claims has been entered. Claims 1-27 are currently pending.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

2. Claims 1, 3-4, 7-10, 14, 16-17, 20-23, and 27 are rejected under 35 U.S.C. 102(e) as being anticipated by Araujo et al (US Patent No. 6,108,350).

With respect to claims 1, 14, and 27, Araujo discloses (see Abstract and Figs. 1A-B) a method for improved configuration of a link (a method for use in configuring a device coupled to a communication network) between CPE and an intermediate device in a network. As shown in Figs. 1A-B, a network comprising a local network, herein, the local network is defined as the network including the CPE 110 and the central office 130, by the examiner; and one or more

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additional networks such as PSTN 134, ATM and/or Frame Relay 137 (the communications network comprising a local network and one or more additional networks coupled to the local network).

Araujo discloses (col. 7, lines 5-12) that the automatic stack determination module 136 of the central office (considered as a first device by examiner) sends a transmission to customer premise equipment 110 (considered as at least one additional device by examiner). By observing the response to the transmission and determining in which protocol the response is formatted, the automatic stack determination module 136 detects the protocol used by the customer premise equipment 110 (automatically determining a link type associated with a communication link between a first device and at least one additional device coupled to the communication network by transmitting one or more messages from the first device and examining a corresponding response received by the first device over the communication link).

Herein, the communication link is considered, by the examiner, as a communication link between the CPE 110 to either ATM network or Frame Relay network 137 for communications. Therefore, the communication link comprising the link from CPE 110 to central office 130 and the link from central office 130 to the ATM and/or Frame Relay network 137 (the communication link being external to the local network and comprising a communication link of the one or more additional networks).

Further, as shown in Fig. 1A, the initial selection 152 is changed to an efficient selection 151 for the CPE 110 and efficient selection 153 is used by the central office 130 since the backbone network is an ATM network (configuring at least one of the first and additional devices in accordance with the determined link type). Herein, the central office (first device)

comprises an Access MUX 135 (considered as a gateway by examiner) for connecting the CPE 110 to the network 137 (wherein the first device comprising a gateway coupled between the local network and one or more additional networks). Further, as shown in Figs. 1A-B, the automatic stack detection 136 of the central office 130 detecting the protocol used by the CPE 110 (wherein step of automatically determining a link type is implemented at least in part within the gateway).

With respect to claims 3 and 16, Araujo discloses in Fig. 1A, the central office 130 comprising an automatic stack detection 136, herein, module 136 is considered as a computer server by the examiner (first device comprising a network server).

With respect to claims 4 and 17, Araujo discloses in Figs. 1A-B, the link is connected to either ATM network or Frame Relay network 137 (determined link type is one of a plurality of link variants associated with the communications network).

With respect to claims 7 and 20, Araujo discloses (col. 6, lines 33-37) that additional protocol layers are included in a complete stack defining the protocols used in the transmission, but are not shown in Fig. 1A. For example, an IP protocol layer would typically be used for internet communication (communications network comprising an IP network) above the PPP layer.

With respect to claims 8 and 21, Araujo discloses in Fig. 1A, the network including the ATM network 137, herein, it is known ATM network comprising different encapsulation layers

(wherein the determined link type comprising one of a plurality of link variants at least a subset of which corresponds to encapsulation of different types of protocols in ATM cells).

With respect to claims 9 and 22, Araujo discloses in Fig. 1A, the network including the ATM network 137. Therefore, data are transmitted via virtual circuit/virtual path (communication link comprising an ATM VC).

With respect to claims 10 and 23, Araujo discloses in Fig. 1A, the protocol stack including PPP, ATM, ADSL, etc... (wherein determined link type comprising one of a plurality of link variants including one or more of a LLC, PPP, LLC-PPP, IP, and LLC-IP protocol, Ethernet, and LLC-Ethernet protocol).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 2, 5, 6, 15, 18, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Araujo et al (US Patent No. 6,108,350) in view of Abler et al (US Pub No. 2003/0067884 A1).

With respect to claims 2 and 15, Araujo discloses in Figs. 1A-B, protocol detection mechanism is implemented by the central office (first device). Araujo does not disclose the first

device comprising CPE. In other words, Araujo does not disclose protocol detection mechanism is implemented by the CPE. Abler discloses in Fig. 2, a multi-protocol network wherein workstations 205 (CPE) are self-determined and configured to the detected protocol. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to implement protocol detection mechanism by CPE in Araujo's system, as suggested by Abler, to detect protocol used in the network.

With respect to claims 5-6 and 18-19, Araujo discloses in Fig. 1, the CPE 110 is connected to the central office via ADSL modem 112 (CPE is coupled to communication network via a DSL and ADSL termination unit-receive device).

Allowable Subject Matter

4. Claims 11-13 and 24-26 are allowable.

The following is an examiner's statement of reasons for allowance:

The prior art does not teach or fairly suggest wherein the determining steps including first testing to determine if the link is an LLC type link, performing at least one additional test of a first type if the link is not an LLC type link, and performing at least one additional test of a second type if the link is an LLC type link, as specified in independent claims 11 and 24.

Response to Arguments

5. Applicant's arguments with respect to claims 1-27 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anh-Vu H Ly whose telephone number is 703-306-5675. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 703-305-4378. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

avl


CHI PHAM
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600 8/26/08